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IN THE HIGH COURT OF DELHI AT NEW DELHI
Order reserved on: 12.07.2022
Order delivered on: 14.07.2022

+ **BAIL APPLN. 968/2021**
HARPAL SHARMA

..... Petitioner

Through: Mr.Ravin Rao, Mr.Inderjeet Singh and
Mr.Nitish Pande, Advocates.

versus

STATE OF NCT OF DELHI

..... Respondent

Through: Ms.Rajni Gupta, APP for State with
SI Arpana PS, Hari Nagar.
Ms.Sunita Arora, Advocate for
complainant.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

ORDER

ANOOP KUMAR MENDIRATTA, J.

1. An application has been preferred on behalf of the petitioner for grant of bail under Section 439 read with Section 482 Cr.P.C. in FIR No. 222/2019 under Section 354(C)/376IPC and Section 6 POCSO Act registered at PS Hari Nagar.

2. In brief as per the case of the prosecution, the case was registered on the statement of Ms. 'M' (prosecutrix) who alleged that in December 2018, she came in contact with petitioner, who was residing in her neighbourhood and they exchanged their mobile numbers and started talking over phone. In the first week of December 2018, the petitioner asked her to go for movie, for which she agreed but instead of taking her for movie, he took her to OYO hotel which was located on upper floor of Kwality Sweets, Clock Tower,



Hari Nagar, New Delhi wherein the petitioner made forcible physical relations with her. Thereafter, he used to take prosecutrix to OYO hotel room, Hari Nagar wherein he used to make physical relations without her consent. Further, the petitioner in OYO Hotel room captured naked photographs which were sent on the phone of Raj Kumar, who is known to her father and the same was revealed by Raj Kumar to her father resulting in a quarrel. Thereupon the aforesaid case registered and investigation taken up.

3. Learned counsel for the petitioner submits that the petitioner in her facebook profile had claimed her date of birth as 09.08.1995 while, as per the case of the prosecution the age of the prosecutrix is claimed to be 09.08.2001. It is further urged that even as per the case of the prosecution, the age of prosecutrix, on the first date of establishment of sexual relations (i.e. 03.12.2018) was about 17 years and 4 months. It is further contended that the statement of the prosecutrix has already been recorded before the Trial Court and petitioner is no longer required. Several inconsistencies in the statement of prosecutrix are further relied upon.

It is also submitted that the petitioner aged about 24 years at the time of incident, is in custody since 10.09.2019 and has clean past antecedents.

It is further denied that physical relations were established forcibly and the case is stated to have been lodged after the relations went sour between the parties due to quarrel between the families. It is also pointed that during her examination-in-chief, the prosecutrix admitted having sent some of her nude photographs herself to the petitioner.



It is further submitted that even as per version of the prosecutrix, the photographs were not leaked by the petitioner but had been leaked by the brother of the petitioner in an intoxicated state, who has since expired. It is urged that as per the version of the prosecutrix, in her cross-examination, she had refused her internal examination initially, though it has been claimed by the prosecutrix that she had been examined at a later stage. However, as per the observations of the court during examination, no such document for examination was found was found on record. It is contended that Investigating Agency has neither collected photographs, signatures or ID proof submitted by the prosecutrix at the time of alleged sexual relations at the hotel.

4. On the other hand, the application is opposed by learned APP for the State. It is submitted that the petitioner had visited Hotel Royal Park in Hari Nagar, Hotel High Sky, Sector-7, Dwarka and visitors' register of Hotel was taken into possession. Further, it is submitted that obscene photographs of the prosecutrix were retrieved from the mobile phone of the accused. However, obscene videos could not be found in the retrieved data. Also, ten obscene photographs were retrieved from the laptop of the accused. The application is opposed on the ground that the prosecutrix was aged under 18 years at the time of incident.

5. I have given considered thought to the contentions raised.

Admittedly, the initial relationship between the prosecutrix and the petitioner appears to be voluntary, wherein she accompanied the petitioner on various occasions without even raising a voice. The matter appears to have gone sour after the relationship came to the knowledge of the parents of



the prosecutrix on the leaking of the alleged nude photographs, in respect of which the petitioner has denied any role. It has come on record during examination-in-chief itself that the prosecutrix also herself forwarded some photographs to the petitioner which reflects her complicity in voluntary establishment of sexual relations. Several other contradictions, inconsistencies have also brought on record but it may not be appropriate to discuss the same in detail, at this stage lest case of either of the parties is prejudiced. The prosecutrix has already been examined and there does not appear to be any apprehension of influencing the witnesses, at this stage. The petitioner who was aged about 24 years at the time of incident has been in custody since 10.09.2019 for about 02 years and 10 months.

Considering the totality of facts and circumstances and the evidence on record, the petitioner is directed to be released on bail subject to furnishing of a personal bond in the sum of Rs.30,000/- (Rupees Thirty Thousand Only) with one surety in the like amount to the satisfaction of the learned Trial Court and subject to following conditions:-

- (i) The petitioner shall provide his mobile number to the Investigating Officer (IO)/SHO concerned at the time of release, which shall be kept in working conditions at all times. The petitioner shall not switch-off, or change the same without prior intimation to the IO concerned, during the period of bail;
- (ii) The petitioner shall not indulge in any criminal activity or any illegal activities during the bail period;
- (iii) The petitioner shall not communicate with, or come into contact with the prosecution witnesses, or any member of the victim's



family, or tamper with the evidence of the case;

Application is accordingly disposed of.

A copy of this order be forwarded to the Jail Superintendent and the learned Trial Court for information and compliance.

(ANOOP KUMAR MENDIRATTA)
JUDGE

JULY 14, 2022/SD

